

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
MARCH 1, 2022**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED ORDER DENYING A PETITION FOR RECONSIDERATION OF ORDER WR 2019-0149 FROM G. SCOTT FAHEY AND SUGAR PINE SPRING WATER, LP CONCERNING THE UNAUTHORIZED DIVERSION OF WATER FROM FOUR SPRINGS IN TUOLUMNE COUNTY TRIBUTARY TO THE TUOLUMNE RIVER

DISCUSSION

On September 17, 2019, the Board adopted Order WR 2019-0149 (Order), which found that G. Scott Fahey and Sugar Pine Spring Water, LP (collectively, Fahey) unlawfully diverted 25.33 acre-feet of water over 178 days between 2014 and 2015 when water was unavailable to serve his priority of right. The Order included a Cease and Desist Order requiring that Fahey cease unlawful diversion, comply with his permits, and complete certain corrective actions according to a schedule. In addition, it imposed Administrative Civil Liability against Fahey in the amount of \$215,000, with the possibility of reducing this amount to \$50,000 if the certain corrective actions were timely completed.

On October 7, 2019, Fahey timely filed a petition for reconsideration regarding the Order.

The proposed draft order finds that Fahey's petition for reconsideration is procedurally deficient because it is not accompanied by a statement of points and authorities in support of legal issues raised in the petition. However, the draft order addresses the arguments presented in the petition to provide clarity regarding the procedures during the September 17, 2019 Board meeting and the Order's requirements. The draft order denies Fahey's petition for reconsideration due to the procedural deficiencies and the lack of merit of the arguments raised.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

This activity is budgeted within existing resources and no additional fiscal demands will result from approval of this item.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed order.